

The regular monthly meeting of the City Planning Board was held on January 20, 2010 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Swope, Dolcino, Foss, Hicks, Meyer, and Shurtleff (representing the City Council). Messrs. Woodward and Henninger, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:01 PM a quorum was present, and the Chair called the meeting to order and announced that Item # 2 (Application by **Tropic Star Development on behalf of Burger King Corporation, the Hall 2001 Family Revocable Trust, and Jean B. Chase** for approval of revisions to a previously approved site plan of property located at **155 and 157 Loudon Road.**) had been postponed at the request of the applicant.

APPLICATIONS

Minor Site Plan and Conditional Use Permit Applications

1. Request by **Elias and Sofia Smirnioudis** for a Conditional Use Permit pursuant to Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance, at **172 Loudon Road. (#2010-02)**

Determination of Completeness

Ms. Hebert explained this proposal to maintain a third driveway to the property at 172 Loudon Road, where only one driveway would otherwise be allowed.

She reported that this application was complete and ready for public hearing.

Mr. Swope moved that the Planning Board determine this application to be complete and open the public hearing. Ms. Dolcino seconded. Motion carried.

Public Hearing

Ms. Hebert explained this proposal to maintain a third driveway to the property at 172 Loudon Road, where only one driveway would otherwise be allowed. The property is the site of the Windmill Restaurant and currently contains three driveways, with two along the Loudon Road frontage and a third onto Gates Street. The approved plan on record with the City dates back to an application for a Special Exception in 1987 by the previous owner. This plan included a note stating that the driveway onto Gates Street would be closed. The existing parking layout does not reflect the layout of the parking lot that was approved when the previous land owner received the Special Exception from the Zoning Board of Adjustment in 1987 for the restaurant use. The plan on record depicts two driveway entrances onto Loudon Road, one serving as an "Entrance Only" and the other as an "Exit Only." The existing driveways onto Loudon Road both provide two-way access onto the site and the paving has extended onto the adjacent property at 174 Loudon Road, which is also owned by the applicant.

She reported that the current owners have been cited by the Zoning Administrator for being in violation of the previously approved plan and they are now applying for a Conditional Use Permit to allow for the continued use of the existing driveway onto Gates Street. The two driveways onto Loudon Road are considered a pre-existing nonconforming use, but the third driveway onto Gates Street will require a Conditional Use Permit for the additional driveway and also to permit a driveway separation less than what is required by the Zoning Ordinance between the proposed driveway and the driveway on the adjacent property, and between the proposed driveway and the intersection of Gates Street and Loudon Road.

She reported that the applicant has submitted a sketch illustrating the existing parking lot layout, which provides for approximately 35 parking spaces with unrestricted access at the three existing driveways.

She explained that the driveway access onto Gates Street provides patrons of the restaurant with an alternative to obtaining access via Loudon Road. Individuals use this entrance to avoid making turning movements onto Loudon Road or to drive through the neighborhood to an intersection that is controlled by a traffic light.

Ms. Hebert reported that the City's Engineering and Planning staff recommended that the third driveway onto Gates Street be permitted subject to designating the existing driveway entrances onto Loudon Road as "Exit Only" and "Entrance Only," as shown on the previously approved plan. She reported that the parking area also extends onto the adjacent property at 174 Loudon Road. City staff has also recommended that the applicant consider merging this property with 172 Loudon Road, and closing the driveway entrance to the house at 174 Loudon Road. This would eliminate the additional curb cut on Loudon Road and aid in the access control efforts on this busy roadway.

The applicant was present to answer questions from the Board.

Tom Arnold from Arnie's Place, abutter to the west of the subject parcel, explained he was not in favor of the driveway access onto Gates Street. He has seen an increase in traffic through his property to access the Windmill Restaurant. It is a straight shot across the back of his own property and it is easy to use as a short cut. His own business customers have had a lot of close calls. He reported that he also owns a small residential property on Gates Street which has no sidewalks and he is also concerned about increased traffic on Gates Street. He explained this access is not just used by cars. It is also used by delivery vehicles and motor homes. It is difficult for a big vehicle to come up Loudon Road, turn onto Gates Street and then make the turn into the back driveway to the Windmill Restaurant so they cut across the rear of his property. People are using his property as a short cut between Ellsworth Street and Gates Street to get to the Windmill Restaurant. He is concerned about safety, and having one more entrance onto Gates Street will only encourage more traffic on his property.

Elias Smirnioudis was present as applicant and rebutted Mr. Arnold's testimony. He reported that it is not possible for a big truck to use the Gates Street access because there is a big tree in the way.

George Smirnioudis, son of the applicant, explained that they also want to continue this access to Gates Street for the safety of their own customers. Many of their customers are elderly and prefer using the Gates Street access instead of exiting onto Loudon Road. In the twenty years they have had the restaurant they have not had any issues about this and they have not seen any delivery trucks using this access.

Elias Smirnioudis also mentioned that the biggest problem with safety in this neighborhood is the events that take place on the Arnold property during the summer. Most of the traffic using Gates Street from the Arnold property is Mr. Arnold's customers parking on Gates Street during events. He reported that his own delivery trucks use his Loudon Road entrance and exit.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:26 PM.

Deliberations and Action on Application

In answer to a question by Ms. Foss, Mr. Henninger described the access to the Arnold property as unrestricted, as there is no curbing along the street frontages and the parcel is substantially paved.

Mr. Swope felt the staff recommendation was reasonable inasmuch as it would restrict Loudon Road access by creating a one-way traffic pattern as well as eliminating access to Loudon Road for the residential building.

Mr. Swope moved that the Planning Board approve the Conditional Use Permit to allow for the construction of the additional driveway and for the driveway separation as presented in the accordance with Article 28-7-11(f) of the Zoning Ordinance with the following conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the application for a voluntary lot merger to combine parcels 175A/5/1 and 175A/5/2 shall be approved by the City and recorded at the Merrimack County Registry of Deeds.
2. The existing driveway entrances onto Loudon Road shall be designated with permanent signs, as "Exit Only" and "Entrance Only," as shown on the previously approved site plan.
3. The driveway access to the property at 174 Loudon Road shall be closed and blocked with a physical barricade; and at such time that Loudon Road is reconstructed the curb cut will be closed and the sidewalk reconstructed.

Ms. Meyer seconded. Motion carried.

Major Site Plan Applications

2. Application by **Tropic Star Development on behalf of Burger King Corporation, the Hall 2001 Family Revocable Trust, and Jean B. Chase** for approval of revisions to a previously approved site plan of property located at **155 and 157 Loudon Road. (#2009-04)**

The Chair reminded the Board and members of the audience that this item had been postponed at the request of the applicant.

Architectural Design Review

3. Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.
 - **Checkmate Pizza** at 41 Washington Street (2 affixed signs)
 - **Friendly's Ice Cream** at 147 Loudon Road (1 freestanding & 2 affixed signs)

The Chair opened the public hearings on the above applications.

- **Checkmate Pizza** at 41 Washington Street (2 affixed signs)

Mr. Henninger explained that at its meeting in November, the Planning Board had tabled action on this sign application and asked the applicant to return to the Architectural Design Review Committee to work out a compromise on the layout and design of the sign. He reported that a meeting of City staff and the applicant had not yet occurred but was scheduled for this week. He expected this application would be reviewed by the Design Review Committee next month with a recommendation to the Planning Board following that review.

Mr. Swope moved to table action until a revised design has been submitted by the applicant and reviewed by the Design Review Committee. Ms. Foss seconded. Motion carried.

- **Friendly's Ice Cream** at 147 Loudon Road (1 freestanding & 2 affixed signs)

Mr. Henninger explained that the application included two affixed wall signs and the replacement of one freestanding sign for the new Friendly's restaurant. He explained that the letters on the wall sign will be channel set and the phrase "Where Ice Cream Makes The Meal" will be affixed to a curved panel that is designed to protrude from the building slightly. He also explained that the freestanding sign involved the refurbishment of the existing sign. The changeable copy is currently on a separate panel which sits lower on the sign post than the "Friendly's" sign. The new sign will combine this into one panel.

He reported that the Design Review Committee found the proposed design and placement of the signs to be appropriate for the location and use, and recommended approval as submitted.

Jay Kahn from The Sign Center was present on behalf of the applicant to answer questions from the Board.

Mr. Swope moved approval as submitted and Mr. Shurtleff seconded. Motion carried.

Amendments to the Subdivision Regulations
Amendments to the Site Plan Review Regulations

4. Consideration of an **amendment to the Subdivision Regulations** relative to adding a new subsection in regard to tabled or postponed applications.
5. Consideration of an **amendment to the Site Plan Review Regulations** relative to adding a new subsection in regard to tabled or postponed applications.

Public Hearing

The Chair suggested that since the proposed amendments to the Subdivision Regulations and the Site Plan Review Regulations both related to tabled or postponed applications, the hearings on both items could be held together, and the Board agreed.

Mr. Woodward explained that the current Subdivision and Site Plan Review Regulations only address a period of validity for applications once conditional approval has been granted, and they also impose limits on how long the Board can consider an application prior to rendering a decision. However, there are a number of applications which have accumulated over time wherein the applicants have submitted an application and it has been tabled pending submittal of additional information or the applicant has requested postponement of consideration of the application. A few of these applications have languished for extended periods of time and there is no specific section of the regulations which addresses these circumstances so as to bring closure to these applications.

He reported that the Planning Division has proposed that the Board adopt a one year limit to any period of inaction on an application due to tabling or postponement, wherein the applicant does not seek further action from the Board. In this case, it is proposed that the application automatically lapse after a period of one year, and that applicants must resubmit the application and a new fee if they wish to resurrect the application in the future.

He further suggested that the effective date be 90 days after adoption instead of immediately after the vote in order to notify those applicants whose projects these amendments would affect if adopted to give them an opportunity to update their application.

Ms. Foss asked if any notice would be sent to an applicant giving them notice that expiration was imminent. Mr. Woodward responded that language would be added to the action letter sent to applicants giving a date certain by which the tabled or postponed applications will expire if no further action is taken.

There was no one who wished to speak for or against these amendments and the Chair declared the hearing closed at 7:41 PM.

Deliberations and Action

Mr. Swope moved that the Planning Board amend both the Subdivision Regulations and the Site Plan Review Regulations to incorporate a time limit for the validity of tabled and postponed applications. Ms. Foss seconded. Motion carried.

Board members proceeded to sign the certification of adoption to be filed by the Board's Clerk with the City Clerk as required by statute.

Amendments to the Rules of the Planning Board

6. Consideration of an **amendment to the Rules of the Planning Board** relative to disqualification of a member from a hearing or decision.

Public Hearing

Mr. Woodward explained that City staff has proposed an amendment to Article IV, Meetings and Conduct of Business, of the Rules of the Planning Board, to incorporate the language from RSA 673:14, Disqualification of Member, which requires Planning Board members to adhere to a juror standard in considering a matter in a judicial capacity such as voting on a subdivision or site plan application.

He reported that it was recommended that the Rules of the Planning Board be amended to add the sentence, "No member shall participate in a hearing or decision on any question for which the Planning Board must make a decision in a judicial capacity if that member would be disqualified for any cause to act as a juror in a trial of the same matter in any action at law", and the phrase, "disqualified by the juror standard". AT the December meeting when this hearing as set, the Board asked that the phrase, "Any factor which would prevent the member from making an impartial decision based on the facts of the case", be added along with the statutory language concerning reasons for disqualification.

There was no one who wished to speak for or against these amendments and the Chair declared the hearing closed at 7:46 PM.

Deliberations and Action

Mr. Swope moved that the Planning Board adopt the proposed amendment to Section 7 of Article IV, Meetings and Conduct of Business, of the Rules of the Planning Board. Ms. Foss seconded. Motion carried.

The Clerk indicated that he would file a copy of the amendment with the City Clerk as required by statute.

REGULAR MEETING

7. Presentation by the consultant retained by **Concord 20/20** to facilitate the review process for the **Concord Zoning Ordinance**.

Mr. Woodward explained that now that the Master Plan had been adopted, the Zoning Ordinance needed to be reviewed to determine what needed to be done to implement the Master Plan. Concord 20/20 had offered to contract with a consultant to facilitate participation from citizens to gather as much information as possible in the review process.

Mr. Woodward introduced Jeffrey Taylor who has been hired by Concord 20/20 to reach out to all the organizations in the city to gather as much information as possible and then submit a report to the City for use by the Planning Board in updating its regulations.

Mr. Taylor explained the start of the work program. He explained his charge was to facilitate the public process and dialogue in order to resolve conflicts where there may be some between the Zoning Ordinance and the Subdivision Regulations and Site Plan Review Regulations. He expected there will be 12 to 15 meetings with various groups to get their input regarding the process. This evening's discussion is to get Planning Board members thinking about this project. He reported that individual focus groups are likely to take place through February and then public forums will be held after that. The intent is where there is common ground, to bring suggested changes to the Planning Board. If the Board agrees with those recommendations, then it should either adopt amendments to the regulations or pass along recommendations to the City Council. Where there is disagreement, then he expected to facilitate discussion to try to resolve those conflicts and to provide suggestions.

Mr. Drypolcher asked that Mr. Taylor provide the Planning Board with a schedule of meetings so that members can attend those meetings. Mr. Taylor indicated there are three or four meetings scheduled and he had met with the Conservation Commission last week. He indicated he would provide notification of any meetings to the Planning Board. Mr. Drypolcher reminded Mr. Taylor of school vacation week in February and suggested that nothing be scheduled for that week.

Mr. Taylor reported that one suggestion that has already come from the Conservation Commission meeting was that the product of each focus group meeting be made available to all other groups for review. He also noted that he would suggest that a joint meeting take place annually of all Boards to discussion common goals.

Mr. Swope felt Mr. Taylor was going in the right direction.

Minutes

Mr. Shurtleff moved approval of the minutes of the meeting of December 16, 2009 as submitted and Mr. Swope seconded. Motion carried.

Applications

9. Request for an extension of the period of validity of a conditional approval of the Minor Subdivision Plat of **Susan Taylor on Shaker Road. (#2009-06)**

Mr. Woodward explained that Richard D. Bartlett & Associates, LLC had requested an extension of the conditional subdivision approval of the application by Susan Taylor seeking to extend the period of validity through February 18, 2011.

He explained that the Planning Board, at a meeting on February 18, 2009, granted conditional final approval of the minor subdivision application for a two-lot subdivision of property on Shaker Road. At the same time the Board also granted a Conditional Use Permit pursuant to Section 28-5-46, Single-Family Dwellings in a Standard (Noncluster) Subdivision, of the Concord Zoning ordinance. CUPs are valid for a period of two years from the date of approval. However, the conditional subdivision approval is valid for a period of one year only, or until February 18, 2010.

He explained that any extensions of a final subdivision approval may be granted by the Board as a waiver of the Subdivision Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the subdivision have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no recorded plat as a means of learning of the existence of the application and the pending change in their neighborhood.

In this case, the applicant has indicated that she is working with her legal counsel to finalize a conservation easement. There are no changes to the regulations that affect this site, and the NH Department of Environmental Services Approval for Subdivision remains valid until May 19, 2011. Therefore, a one-year extension appears to be reasonable for the Board to grant.

Mr. Swope moved that the Planning Board grant a waiver of the Subdivision Regulations for a one-year extension for this application, extending the period of validity through February 18, 2011. Ms. Dolcino seconded. Motion carried.

10. Request for an extension of the period of validity of a conditional approval of the Minor Subdivision Plat of **Tropic Star Development on behalf of Burger King Corporation, the Hall 2001 Family Revocable Trust, and Jean B. Chase at 155-157 Loudon Road, 36 Burns Avenue, and 9 East Side Drive. (#2009-03)**

Mr. Woodward explained that the attorney for the applicant had requested an extension of the conditional subdivision approval of the above referenced application seeking to extend the period of validity through January 21, 2011.

He reported that the Planning Board, at a meeting on January 21, 2009, granted conditional final approval of the minor subdivision application for a subdivision and resubdivision of properties on Burns Avenue, East Side Drive, and Loudon Road. The original approval was valid for a period of one year or until January 21, 2010.

He reported that any extensions of a final subdivision approval may be granted by the Board as a waiver of the Subdivision Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the subdivision have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no recorded plat as a means of learning of the existence of the application and the pending change in their neighborhood.

He reported that in this case, the applicants have indicated that they are submitting a revised site plan application which is based on the subdivision, and they need the extension to allow time for the Board's consideration and action on the revised site plan application. A one-year extension appears to be reasonable for the Board to grant.

Mr. Swope moved that the Planning Board grant a waiver of the Subdivision Regulations for a one-year extension for this application, extending the period of validity through January 21, 2011. Mr. Shurtleff seconded. Motion carried.

New Business

11. Consideration of a request for an extension of the stay of the revocation of the recorded subdivision plat of the **Emerald Abode Subdivision on Graham Road (#2003-37)**

Mr. Woodward explained that the Planning Board, at a meeting on April 15, 2009, considered a report from the Planning Division concerning the revocation of the recorded plat of the Emerald Abode Subdivision based on a failure to achieve substantial completion and to attain a vested status pursuant to RSA 674:39 against changes in ordinances and regulations. As the site is in the Residential Open Space (RO) District, compliance with the Cluster Development standards as amended in March of 2007, is now mandatory. The Board voted to find that the Emerald Abode Subdivision had failed to achieve substantial completion within four years of the date of approval and therefore had failed to become vested pursuant to RSA 674:39, and must comply with the changes to the City's Zoning Ordinance.

He reported that the Planning Board set a public hearing for May 20, 2009, for the consideration of revocation of approval. At the hearing, the applicant testified that he was planning to submit an application to amend the plat so as to comply with the City's cluster development regulations. The Board voted to stay its action for a period of ninety days to direct the Clerk to file the declaration of revocation at the Merrimack County Registry of Deeds, based on the applicant's representations relative to the filing of an application within sixty days to bring the Emerald Abode Subdivision into compliance with the City's Zoning Ordinance, and subject to the submittal of a written instrument from the property owner agreeing to not convey any lots in reliance on the currently recorded plat during the 90-day period of time. The Board further noted that, in the event an application for approval of a revised and compliant plat was not submitted within 60 days, the revocation shall be placed on the Board's August agenda to complete its action to revoke the recorded plat subdivision.

He reported that at the Board's meeting on August 19, 2009 meeting, the applicant submitted a request for a further stay of the revocation indicating that the delay beyond the originally promised 60-day submittal following the May 20, 2009 public hearing related to a need to obtain a new Alteration of Terrain Permit from NH Department of Environmental Services, which had adopted new regulations that became effective in 2009. At that meeting, the Board voted to grant an extension of the stay of the revocation of the plat of the Emerald Abode Subdivision, indicating that if a revised plat was not submitted on or before December 18, 2009, which is the application deadline for the January 20, 2010 meeting, then the Clerk was to provide written notice of the revocation to the owner and file a declaration of revocation at the Merrimack County Registry of Deeds after 30 days following the written notification. The Clerk advised the applicant that if there was a need for a further extension of the stay, he was to submit a request for the agenda for the regular meeting of December 16, 2009, for the Board's consideration. He reported that no request for a further extension was received for the December 16, 2009 meeting, nor was a revised plan submitted on December 18, 2009. The Clerk provided a written notice to the applicant by certified mail that the plat revocation would be filed on or after January 25, 2010, and the applicant subsequently contacted the Clerk to indicate that he had lost track of the deadline, and would like a further extension. He explained that he had been pursuing a new Alteration of Terrain permit from NH DES but that they had required an as-built survey of the property in its partially developed state, and soil mapping. These activities had recently been completed so that now a complete submittal for a new permit could be prepared. He believed the permit could be obtained before April 1, 2010.

Mr. Shurtleff moved that the Planning Board grant a further extension of the stay of the revocation of the plat of the Emerald Abode Subdivision, which was recorded in the Merrimack County Registry of Deeds as Plan #18068 on August 31, 2006, under the title of, "Julie Drive Subdivision prepared for Emerald Abode LLC". If a revised plat is not submitted on or before noon on April 23, 2010, which is the application deadline for the Board's regular meeting on May 19, 2010, then the Clerk shall file the declaration of revocation at the Merrimack County Registry of Deeds forthwith. If another extension is thought to be necessary, the applicant must submit such a request for the agenda of the April 21, 2010 meeting. Ms. Meyer seconded. Motion carried.

12. Consideration of **amendments to the Zoning Ordinance** to address changes to the Flood **Hazard (FH) District** pursuant to a compliance review for the National Flood Insurance Program.

Mr. Henninger explained that the NH Office of Energy and Planning recently completed a compliance review of the City's floodplain regulations in relation to the City's participation in the National Flood Insurance Program, and has notified the City that the draft Flood Insurance Rate Map (FIRM) for Concord will become effective on April 19, 2010. In order for the City to remain eligible for federal flood insurance, the new draft FIRM maps must be adopted to replace the current FIRM map which is dated August 23, 1999. It was explained that the Federal Emergency Management Agency (FEMA) has advised that no changes have been made to the DFIRM maps resulting from the appeal and comment period. The flood boundaries in the proposed draft FIRM are largely unchanged from the existing FIRM. The boundaries of the

Flood Plains are unchanged except at two locations, and there are five basic changes to the FIRM as follows:

- The draft FIRM is now available on line in a digital (PDF) format. The Flood Plain Boundaries are displayed on 1998 aerial photographs; however, the quality of the aerial photos is not up to the standards to which the City is accustomed and often the graphics obscure buildings and significant features. The City of Concord is displayed on 22 individual maps, in part or in whole. In contrast, the current FIRM consists of six (6) maps for the City of Concord.
- Flood elevations on the draft FIRM are referenced to the North American Vertical Datum of 1988 (NAVD 88) rather than the National Geodetic Vertical Datum of 1929 (NGVD 29). Using information in the United States Geological Societies (USGS) study of the "Flood of May 2006 in New Hampshire", the NGVD 88 datum is approximately 0.6 feet less than the NGVD 29 elevation along the Contoocook, Merrimack and Soucook Rivers in Concord.
- The draft FIRM reflects a previously approved Letter of Map Changes (LOMC) submitted by the City in regard to the existing FIRM. The only change was to correct a mapping error westerly of Hannah Dustin Drive.
- The Base Flood Elevation (BFE) has been adjusted at the city/town line between Boscawen/Canterbury and Concord along the Merrimack and Contoocook Rivers. The BFE on the Merrimack River at the Boscawen/Canterbury town lines has been increased by two (2) feet.
- The BFE on the draft FIRM can vary up to one foot plus or minus ($1' \pm$) from the elevations shown on the existing FIRM. More BFE lines have been provided on the Contoocook and Soucook Rivers. There will be no regulatory impact along the Merrimack River, since the City uses the Army Corps of Engineers (ACOE) determined flood elevations. There may be impacts along portions of the Contoocook River with the old camp lots and houses on Riverhill Avenue, and Hardy Lane among others. The changes can partially be accounted for by the change from NGVD 29 to NGVD 88. This would account for an approximate 0.6 foot drop in the flood elevations on the new draft FIRM. However, some locations on the draft FIRM are at the same elevation or higher ones than those shown on the existing FIRM.

He reported that there is no information in the USGS report that would question the legitimacy of the BFE or draft FIRM along either the Soucook or Contoocook Rivers. The information supplied by the USGS clearly indicates that the BFE along the Merrimack River has been underestimated. For the Merrimack River, the City has relied on the BFE provided by the Army Corps of Engineers for establishing the Flood Hazard (FH) Overlay District boundaries and minimum finished floor elevations. The ACOE study is based on the 1936 flood as would have been modified by the upstream ACOE flood protection dams and reservoirs. The ACOE elevations require finished floor elevations at least two (2) foot higher than indicated by either the current FIRM or the proposed draft FIRM.

Mr. Henninger further reported that in July of 2008, the City of Concord filed an appeal with FEMA relative to the Flood Insurance Study from which the new draft FIRM was prepared. The City was notified in early 2009 that the information provided by the City from the USGS

report on the Mother's Day Flood of 2006, entitled "Flood of May 2006 in New Hampshire", Open File Report 2007-1122, was not sufficient to appeal the Flood Insurance Study or the draft FIRM.

Ms. Foss had questions related to the difference in the standards along the Merrimack River and how that would affect property owners outside the FEMA flood area but within the area the City considers at risk. She also noted that it appears erosion is more of a risk these days than water and flooding.

Mr. Shurtleff moved that the Planning Board forward to the City Council an ordinance amending the Flood Hazard (FH) Overlay District of the Zoning Ordinance so as to incorporate an updated Flood Insurance Rate Map (FIRM) with a favorable recommendation for adoption. Ms. Foss seconded. Motion carried.

13. Consideration of a report on the City's compliance with **RSA 674:59, Workforce Housing Opportunities**, which took effect on January 1, 2010.

Mr. Woodward explained that, at the request of the City Solicitor, the Planning Division had conducted an analysis of the status of the city in regard to the City's compliance with RSA 674:59, Workforce Housing Opportunities.

He reported that the review indicated that the City has provided ample opportunities for the development of workforce housing in its zoning regulations. In addition, the City has provided more than its required fair share of affordable housing in the central New Hampshire region. He explained that no regulatory distinction is made as to the type of property ownership, whether properties are intended for owner occupancy or rental or a combination of both. The opportunity to construct workforce housing is available in most of the City's residential districts and the majority of its commercial and mixed use districts.

He reported that attached and multi-family development is allowed in all zoning districts within the Urban Growth Boundary with the exception of the Single Family District (RS). Currently, the City is evenly divided between owner-occupied and rental housing units. Based on the Year 2000 Census, 49% of all dwelling units were rental units, far in excess of the regional average of 31.5%. Manufactured housing accounts for nearly 8% of all housing stock in the city, over 8% of the city's population resides in group quarters, and over 50% of the housing stock consists of duplexes, attached dwellings, and multi-family dwellings.

He explained that in 2005 the City had 20% of all housing in Merrimack County but had more than 53% of the assisted housing. The Central New Hampshire Regional Planning Commission, in their last regional housing assessment in 2000, had noted that the city had met and substantially exceeded its regional fair share of affordable housing.

In addition, Mr. Woodward reported that the Planning Board had recently approved a site plan for 25 additional workforce housing units for the Concord Housing Authority on Parmenter Road. This is comparable to a city-wide total of 25 new units constructed in all of 2009. Also, 40 units of affordable elderly housing were completed in late 2008 for Concord Area Trust for

Community Housing as Phase Two of the Friedman Court project. New workforce housing has been created in the community even in a difficult housing market.

There was no further action required by the Board; this was brought to the Board's attention for informational purposes only.

14. Consideration of an appointment to the **Architectural Design Review Committee**.

Mr. Woodward explained that the Planning Board voted to establish the Design Review Committee in 1978, and in 1990 adopted an amendment to the Site Plan Review Regulations which specified that the Committee should consist of at least five and no more than seven members with training or experience in architectural design, landscape architecture, or historic preservation. The term of membership is three years and the members must be local residents. There are currently six citizens serving on the Committee and one vacancy.

He reported that Jennifer Czysz, a resident of Penacook with degrees in architecture and city planning, had expressed an interest in serving on the Committee. Since 2006 she is currently the Senior Planner for the New Hampshire Office of Energy and Planning.

Mr. Swope moved that the Planning Board appoint Jennifer Czysz to the Design Review Committee for a three year term expiring on December 31, 2012. Ms. Foss seconded. Motion carried.

15. Consideration of a Site Plan for **WS Dennison Cabinets, Inc. in the Silver Hills Business Park in Pembroke** for which the City received an abutter notice because of its well field on North Pembroke Road.

Mr. Woodward explained that an abutter notice was received from the Pembroke Planning Board relative to a Special Use Permit and major site plan application from WS Dennison Cabinets, Inc. for development of a lot in the Silver Hills Business Park, which has been the focus of a Development of Regional Impact review and has not as yet received approval from the Pembroke Planning Board. The Dennison applications have been placed on the January 26, 2010 agenda for the Pembroke Board for a determination of completeness to be followed by a public hearing if they are determined complete. The Silver Hills Business Park subdivision application is on the same agenda prior to the Dennison applications. If the Silver Hills application received conditional approval that evening, then all conditions attached to the Silver Hills application will apply to the lot for which the Dennison site plan application has been submitted.

He reported that the Dennison lot is within the Well Head Protection Area for the Concord well field, and in the Town's Aquifer Protection District. The Dennison company manufactures wooden cabinets but includes painting, staining, and finishing of the cabinets with the associated storage of paints, stains, and lacquers. This potential use in the subdivision was discussed at the November 24, 2009 meeting of the Pembroke Planning Board attended by the Concord Planning Board Chair and City staff members. It was noted that Dennison has eight employees and, without Town water and sewer at the site, could have no more than 24 employees on a well and septic system. The Pembroke Board was discussing extending the

Town's Aquifer Protection regulations to the WHPA along with some of the covenants which Concord used for the Henniker Street subdivision which is in the Pembroke WHPA.

He reported that the detailed application materials included lists of chemicals and substances which would be of concern if spilled. These chemicals appear to be addressed in Pembroke's Aquifer Conservation Ordinance which requires a Special Use Permit for petroleum products, chemicals, road salt, and other materials which have the potential for contaminating groundwater and which shall be stored above ground level within a fully enclosed structure designed to contain any spill within the structure. This would also be addressed by the suggested covenant provided by the City to the Town.

Ms. Foss moved that the Planning Board advise the Pembroke Planning Board that the Concord Planning Board has no objection to the Dennison Cabinets Major Site Plan and Special Use Permit applications provided that the final approval of the Silver Hills Subdivision is subject to the provisions of the Town's Aquifer Conservation Ordinance as well as to those covenants selected by the Pembroke Board at their meeting on November 24, 2009, such that the Dennison parcel will be subject to the combination of those standards and restrictions. Ms. Meyer seconded. Motion carried.

Old Business

17. Further consideration of a review of a **Development of Regional Impact in Pembroke** adjacent to the City's wellfield (**Concord Sand & Gravel Excavation Expansion**). (#2009-43)

Mr. Woodward explained that at its meeting on November 18, 2009, the Planning Board considered a Development of Regional Impact along with an invitation to attend the Pembroke Board's meeting at which this matter would be considered. The DRI related to an expansion of an excavation by Concord Sand and Gravel Company on land north of North Pembroke Road adjacent to the City's well field and the Soucook River. It was noted that access and egress to and from the excavation site in Pembroke are via a private bridge over the Soucook River and through the inactive gravel pit also owned by the applicant and located in Concord. The haul road then accesses Route 106 in Concord just south of the Loudon Road intersection.

He reported that the current application in Pembroke is being regulated by the Town as an expansion of an existing excavation, and the focus is on an area of 17 acres to the east of previous areas of excavation and further from the City's well field. The life expectancy of the operation may range up to 100 years. The Pembroke excavation has been depleted in the area closest to the City's well field and that area has been partially reclaimed. The applicants have proposed to install monitoring wells between the new excavation area and the well field. The applicants have noted that the City's well field has sustained no adverse impacts from the excavation to date.

He reported that, at the Concord Planning Board's meeting in November, members voted to request that the Pembroke Planning Board consider a requirement for the retention of a consultant at the applicant's expense to review the plans and studies submitted by the applicant as it relates to the impact on the City's well fields on North Pembroke Road. The Board also wanted to make the Pembroke Board aware that the access to the operations on Route 106 may

be restricted in the future by NH Department of Transportation to a right turn in and out, which may create a need for the empty trucks to return to the site via North Pembroke Road.

He reported that the Planning Board Chair, the City Planner and the Deputy Director of General Services had attended the Pembroke Planning Board meeting on November 24, 2009 and testified on the application. The Pembroke Board agreed to require that a consultant be retained at the applicant's expense with the consultant under contract to the Town to review the site, the application, and the proposed mitigation measures in relation to the impact on the City's well field, and to offer recommendations as may be necessary.

Mr. Woodward reported that Emery and Garrett Groundwater, Inc. were retained by the Town of Pembroke to conduct the review and analysis, and they have submitted a draft summary of their review following a meeting with City staff and a field visit with the applicant and the applicant's agents. Emery and Garrett concluded that the mineral extraction, which will occur through blasting, excavation and crushing of bedrock, will not affect the yield or the amount of water available from the City well field. However, there are potential sources of contamination from the blasting, mining, and crushing operations. They do note that because the Soucook River contributes a significant portion of the recharge for the well field, any contamination would likely be diluted below levels which would be of concern.

He reported that Emery and Garrett had recommended that an Operations Plan for Mineral Extraction, a Blasting Plan, and a Groundwater Monitoring Plan be prepared, and they further recommended that the Town and City approve these plans before they are submitted to the NH Department of Environmental Services as part of a Permit Application for Alteration of Terrain. They also recommended additional monitoring wells be installed, that a retention pond be established to intercept runoff from quarrying, blasting, and processing operations, that periodic inspections be conducted, and that semi-annual water quality analyses be expanded to include additional compounds.

Mr. Woodward reported that the applicant's attorney had expressed a concern over having to have the Town and City approve the three plans prior to submittal to NH DES. Instead, City staff suggested that the City have an opportunity to review and comment on the three plans instead of approving them.

Ms. Foss asked if there was any information regarding the composition of the bedrock, particularly as it relates to radioactive materials. She was not certain if that would be an issue in this case but, given that this is a water supply, it would be interesting to have that information.

Staff was asked to inquire of the consultants if any testing had been done regarding the presence of radioactive substances in the bedrock and if it is a concern, what has been or will be done to mitigate the impacts of the same.

Mr. Shurtleff moved that the Planning Board forward the report by Emery and Garrett Groundwater Inc. to the Pembroke Planning Board indicating the Board's support for the recommendations with the exception of the requirement approval of the Operations Plan for Mineral Extraction, the Blasting Plan, and the Groundwater Monitoring Plan, prior to submittal

to NHDES for an Alteration of Terrain Permit. In that instance, the Board requests that the City be given the opportunity to review and comment on those three plans prior to submittal to NHDES, and also that the consultants be asked if any testing has been done regarding the presence of radioactive substances in the bedrock and the methods of mitigating such, if necessary. Ms. Foss seconded. Motion carried. The Board expressed its appreciation to the Pembroke Planning Board for its consideration of the City's concerns for its well field.

16. Further consideration of a review of a **Development of Regional Impact on North Pembroke Road in Pembroke** across from the City's wellfield (**Silver Hills Business Park**). (#2009-30)

Mr. Woodward presented a copy of the letter dated December 28, 2009 sent on behalf of the Planning Board to the Pembroke Planning Board relative to its review of a Development of Regional Impact on North Pembroke Road in Pembroke across from the City's wellfield known as Silver Hills Business Park.

He reported that the Pembroke Planning Board will meet again next week to further discuss this application.

INFORMATION

- Copy of letter to the Loudon Planning Board dated December 17, 2009, relative to the **NH Motor Speedway** Development of Regional Impact.
- Copy of the Record of Action of the Technical Review Committee relative to a Minor Site Plan application of **Keene Medical Products** at **66 Airport Road**.

The Clerk reported that these documents were presented for information purposes only and no further action was required at this time.

There was no further business to come before the Board and the meeting adjourned at 9:02 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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